The motion by the Financial Secretary that the Report of the Public Accounts Committee and of Audit and Appropriation for 1112 be adopted, was then put to vote and carried.

LEGISLATIVE BUSINESS

THE TRIVANDRUM CITY MUNICIPAL BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to move that Messrs. C. P. Gopala Panicker, P. V. Mathai Chemparathil and P. Narayana Pillai be nominated members of the Joint Committee on the Trivandrum City Municipal Bill, in the place of Messrs. G. N. Tampi, K. T Thomas and A. Thanu Pillai.

MR. K. P. PADMANABHA MENON: I second it. The motion was put to vote and carried.

THE TRAVANCORE DISTRICT MUNICIPALITIES BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to move that Mr. K. P. Kochukoratharakan be nominated on the Travancore District Municipalities Bill in the place of Mr. K. T. Thomas.

MR. K. P. PADMANABHA MENON: I second it. The motion was put to vote and carried.

THE TRAVANCORE WORKMEN'S COMPENSATION BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to present the report of the Select Committee on the Travancore Workmen's Compensation Bill.

In presenting the report, I may be permitted to make a few observations. The Bill was introduced sometime back and it was pending with the Select Committee for a pretty long time. In the meanwhile, certain amendments were made in the British Indian Workmen's Compensation Act; and the Select Committee had, therefore, the advantage of considering and in most cases of adopting those amendments, so that our legislation on this matter may be on a par with the legislation outside. Honourable members might know that all those amendments, have been referred to in detail in the Select Committee Report; and the Bill as revised contains important changes. These amendments, Sir, I believe, would put the Bill beyond all controversy and make it acceptable to both the labourers and employers. So far as I could see, there is not much to be moved by way of amendments to these provisions because this will in effect be the most up to-date Bill on this matter I move that the Bill as revised by the Select Committee be now considered.

MR. K. P. PADMANABHA MENON: Sir, I second the motion.

DEPUTY PRESIDENT: The question before the House is that the Bill as revised by the Select Committee be considered.

The motion was put to vote and carried.

Clause 1.

The question that Clause 1 do stand part of the Bill was put to vote and carried. The clause was added to the Bill.

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Clause 2.

SRIMATHY C. O. PONNAMMA: Sir, I beg to move, in Clause 2, sub-clause (n), insert as (iii) the following:

"employed in any hazardous occupation even though the employment be of a casual nature."

I also beg to move for the addition of the word 'or' since there is an omission of the same. According to the definition, it is omitted to include the casual labourers in the category of workmen. The object of my amendment is to include such people who are temporarily employed to work under an employer, so that they may also have the benefit of this legislation. In Schedule II a list of workmen is given; but in my opinion, that schedule is not an exhaustive one. There may be labourers who can be classified under workmen, who may meet with accidents when serving an employer. The employer can then easily get rid of them by saying that they are only casual labourers. In hazardous occupations such as the construction of a bridge or a building, additional hands than those who are usually employed may be necessary. According to this definition their employment is of a casual nature. They cannot claim any benefit as resulting from this piece of legislation. It is quite possible that when such casual labourers demand compensation, the employer can refuse the same on the ground that the employment is of a casual nature. Therefore, I beg to move this amendment for the acceptance of the House.

MR. E. P. VARGHESE: I support the amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI: I oppose the amendment Sir, for more reasons than one. In the first place, there appeals to be a misapprehension about the implication of the clause as it stands under this motion. The mover wants also persons employed in any hazardous occupation even though the employment be of a casual nature, to be included among the class of workmen who are entitled to compensation under the provisions of this Bill. My humble view of the matter is, that the Bill as it stands goes farther than this. All those whose employment is of a casual nature are even under the existing provisions entitled to compensation, it need not be work of a hazardous nature. Even if the work be of a non-hazardous nature the labourer is, under the existing provisions, entitled to compensation. The effect of the amendment would be to make a distinction between hazardous and non-hazardous occupation. The clause as it stands does not make any distinction between hazardous and non-hazardous occupation. The employee, whether casual or otherwise, is entitled to compensation irrespective of the question whether the employment is hazardous or non-hazardous. The amendment if adopted would be restrictive of the scope of the section. If that is so, I ask the representative for labour, why she wants to limit the scope of the section to workmen who are employed on hazardous labour. The clause as it stands reads thus:

'Workmen' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business.)

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[Mr. Puthupally S. Krishna Pillai.]

So that, in order that the workman may not come within this definition two conditions should be present. One is employment of a casual nature and the other is that it should not be for work other than for the purposes of the employer's trade or business. If a workman is employed for purposes of the employer's trade of business, it does not matter whether his employment is casual, seasonal or permanent or whether the employment is or is not hazardous; he is a workman for purposes of the Bill. The reason is that he fulfils only one and not both the conditions. That is the limitation that is imposed. If both the conditions are satisfied he does not come within the definition. If only one is satisfied he comes within it. In the ordinary circumstances, a person who is connected with the trade or business of the employer is entitled to compensation even if the work be not of a hazardous nature. Then why should it be work of a hazardous nature? The amendment, therefore appears to be unnecessary.

MR. KOTTALIL P. ABRAHAM May I know whether the amendment cannot be taken as an explanation of the Section as it is found in the Bill?

MR. PUTHUPALLY S. KRISHNA PILLAI: As the member in charge of the Bill, I cannot be concessional in the matter of lagislation. If it is an explanation it must come in as a matter of explanation. The member brings it as sub-clause (iii) of sub-clause (n). There are two clauses mentioned under clause (n).

> "(i) a railway servant not employed in any such capacity as is specified in Schedule II, or
>
> (ii) employed in monthly wages not exceeding three hundred rupees in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Regulation and whether such contract is express or implied, oral, or in writing but does not include any person working in the capacity of a member or Our Military Forces; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them;"

The third clause now sought to be included is "employed in any hazardous occupation even though the employment be of a casual nature". The principle contained in the definition is that in order that the labourer may be entitled to compensation he must be employed in the trade or business of the employer. If that is so this will exclude only persons who are not employed on the trade or business of the employer. That is the gist of the section. In every other respect he will be entitled to compensation. If my friend Mr. Kottalil P. Abraham who is not carrying on a trade, engages a person to whitewash his house, and if the labourer falls down and is enjured, he is not entitled to protection because both conditions attach to him. He is a casual employer employed for purposes other than the employer's trade or business. In other words, even if it is a hazardous work the labourer is not entitled to compensation. But in the case of say, Mr. Chandamiah Sahib, who is a salt merchant, for purposes of illustration, if the same labourer is engaged for the purpose of attending to some work of a casual

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nature in the factory, even if the work be not of a hazardous nature the labourer is within the definition and entitled to protection. It does not matter whether the work is of a hazardous or non-hazardous nature, because the labourer fulfils only one and not both conditions.

DEPUTY PRESIDENT: The idea of the honourable member might be to extend the scope of the Bill by including workmen whose occupation will be of a casual nature. Those persons whose employment is of a casual nature are obviously excluded under clause (n), first portion. The member wants to include people whose employment is of a casual nature provided the employment will be hazardous. That is the idea.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, my point is that all casual labourers are protected provided their work relates to the trade or business of the employer. The amendment looks as if the clause excludes all casual workers. Casual workers are excluded only if the employ ment is for a non-trade or non-business purpose of the employer.

DEPUTY PRESIDENT: The House will now adjourn and re-assemble at 2.

The Assembly adjourned for lunch at 1 p. m. and re-assembled at 2 p. m. the President presiding.

NEW MEMBER.

Mr. C. V. Chandrasekharan took the oath and signed the rolls.

LEGISLATIVE BUSINESS.—(*contd.*)

THE TRAVANCORE WORKMEN'S COMPENSATION BILL—(*contd.*)

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I was pointing out how the clause as it stands in the Bill is more beneficial to the labourer than it would be if amended as now proposed. Clause 2 (n) says

> "(n) 'workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business).....

In order that a labourer may not come within the definition of the term 'workman', two conditions have to be fulfilled, namely, (1) the employment should be of a casual nature, and (2) the employment must be for a purpose other than the employer's trade or business. In other words, if the employment, whether casual or not casual, is for purposes of the employer's trade or business, the employee will be a workman under the definition. Under the definition as it stands, whether the employ. ment is hazardous or not, the workman will get the benefit of this legi . lation if the work is for the purpose of the employer's trade or business

The only class of servants that will be excluded from that clause is casual servants engaged for any domestic work. I hope it is not the intension of the mover that such workmen also should be included. Even if there is any such object behind this motion, I think that the interpolation of Sub-clause (iii) will make it redundant.

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[Mr. Puthupally S. Krishna Pillai.]

I have perused the English Law on the subject as also the Indian Act ; in both those enactments the provision is similar to the provision now in the Bill. The object of the present definition is probably to include the case of casual workmen engaged for domestic purposes. Neither the English nor the Indian Act has gone to the extent to which the member apparently is contending for Domestic servants employed for the season or until otherwise terminated are still within the Bill.

The exact import of the proposed amendment is not quite clear to me, Sir. If it is the interests of the labourers that the mover of the amendment has in view, then, certainly, the provision now in the Bill is better. I am sure the mover herself would grant that she should not be made to pay compensation for a cooly whom she engages for half a day for white-washing her dwelling house. Even if that is what she wants, I submit, the amendment ought to be worded differently.

Since I find that the amendment as it stands restricts the scope of he present provision in the Bill, and I am not in full agreement with the supposed meaning which it might bear, I oppose it.

MR. E. SUBRAMONIA AIYAR : Sir, my apprehension is that the amendment may not serve the purpose for which it has been brought in. The object of the mover seems to be to extend the benefit of this measure to a larger number of persons than has now been contemplated by the provision in the Bill.

A reading of the provision now sought to be amended together with the amendment makes it clear that the amendment only tends to restrict further the operation of the provision. In this connection, clause 2 (n) has to be read along with schedule II ; because although the former provision is a defining section, the definition is not really there ; you find the definition really in the schedule.

One point which strikes me most in considering this amendment is the fact that it restricts the scope of the provision to *hazardous* occupations. Sir, in matters of this kind, endeavour should be made to make the law as certain and as definite as possible. It should not be left to the courts to determine whether a particular occupation is hazardous or not. Hazard is always a question of degree. Every one of us knows what the result will be if we leave such matters to be determined by the courts in each case ; the decisions will depend on several currents operating in the minds of the judges. An occupation which one court may regard as hazardous may be regarded as not so by another court, and conflicting dicisions will come in. Therefore it is that, in the schedule, attempt has been made to define such occupations by enumerating them one after another. I would invite the attention of the House to schedule II. It says-

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"The following persons are workmen within the meaning of Section (2) and subject to the provisions of that Section, that is to say, any person who is (i) employed' otherwise than in a clerical capacity or on a railway in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity.....

I do not want to tire the patience of the House by reading the whole of it ; there are twenty-four cases contemplated in schedule II. A close examination of the schedule will reveal the fact that the attempt has been to lay down as clearly as passible what are the occupations which would entitle the workman to the benefit of the measure. Firstly therefore, because the amendment has left it to the courts to determine what is hazardous, and what is not hazardous I would oppose it.

Further, so far as I have been able to see, in schedule II, there is no question at all about the duration of the employment; it is not stated there that, in order that a workman must be entitled to the benefits of this measure, he should have worked for a particular period. The period is not the test at all. The period of twelve months has nothing to do with the actual period of employment of a particular workman. What is stated is that workmen in a particular premises would be entitled to the benefits of this enactment only if for a period of twelve months preceding the accident not less than fifty workmen have been working in the premises. A careful reading of schedule II makes it clear that the benefit of the measure would extend to workmen engaged in the various occupations detailed in that schedule, whatever may be the period of the actual employment of individual workmen. No distinction is sought to be made there between casual employment and so called permanent employment. I am sure, once that misapprehension is removed, no necessity for the proposed amendment would arise.

As I said at the outset, Sir, the tendency everywhere is to make such laws definite and certain ; unless that is done, the remedy sought to be provided would cease to be effective. The object of this measure is to determine definitely the relationship between employer and employee, to lay down clearly their rights *inter se*, to provide something like insurance as it were against accidents, in favour of the employees. That being so, it is better that the law is absolutely clear and definite leaving no room for the courts to go into the merits of individual cases.

I am therefore at one with the Legal Remembrancer in my view that the proposed amendment does not improve the lot of the workmen in any way whatsoever; nor does the provision as it is exclude from the operation of the bill any workman who really deserves compensation for injury sustained by him in the course of his employment.

The point for the House to consider is—are we to extend schedule II ? That is the real question. Are we to extend the Act to some more occupations where a workman may be entitled to compensation. If that is the idea, specific reference to such occupations has to be made ; and we should not merely add what is called an omnibus clause "hazardous occupation." If anybody is excluded at all, as was pointed out, it is only the person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or business. The exception is really no exception at all. In fact, the idea of the Act

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[Mr. E. Subramonia Aiyar.]

seems to be that it is the workmen who are employed in a particular occupation or under an employer for the purpose of his trade or business who shall be compensated. The policy seems to be that if a person carries on a business or trade, he must bear the risks attendent thereon. No doubt at one time we might have thought that carrying on a trade or carrying on some business was a matter purely within the liberty of the individual; but modern conditions necessitate some liability being thrown upon persons who carry on business of their own. If you carry on business on a large scale employing a large number of people, and make a profit, certainly the State says that there is a duty cast upon you to see to the comforts, requirements, losses and the injuries which may be caused to the people whom you employ. It is nothing but an extension of the ordinary law regarding domestic relations. Certainly there is a duty cast upon an individual to maintain the members of his household The reason for it may be different. But here the assumption is that the person who is able to bear the liability is the employers and if such liability is to be imposed upon him, the workman must be a person employed in the business The liability is the liability of the business carried on by the employer and not of the employer. That seems to be the basis of the Workmen's Compensation Act. It seems to me therefore that the exception, in the case of employees of a casual nature but not engaged for the purpose of the employer's trade or business, will create confusion. To my mind it appears that the object of the mover certainly requires consideration; but in the form in which the amendment is brought, it does not improve the matter at all. On the other hand it will make the provisions of the Bill to a certain extent indefinite and vague which on account of the principles underlying legislations of this nature should not be permitted.

SRIMATHI C. O. PONNAMMA: I beg to withdraw the amendment

The amendment was, by leave of the House, withdrawn.

The question that Clause 2 do form part of the Bill was then put to vote and carried. The clause was added to the Bill.

Clauses 3 to 39.

The question that Clauses 3 to 89 (both inclusive) do stand part of the Bill was then put to vote and carried; and the clauses were added to the Bill.

SCHEDULE I.

SRIMATI C. O. PONNAMMA: Sir, I beg to move the following amendment to Schedule I:

Add "permanent disfigurement" in the left column, and "10" in the right column below "loss of any finger other than index finger in the left column and "5."

There is provision in this Bill to pay compensation in almost all cases where there is loss of earning capacity to the workman. Though disfigurement in the strict sense does not cause loss of earning capacity to the workman it should be calculated as acting as a hindrance in his securing employment. A person whose features are disfigured owing to

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accident is likely to lose his employment, and in that case he will be injured very much. The man's personality may count much and it will increase or decrease his value in the labour market. There is also an aversion on the part of the employer to give employment to a labourer with a disfigured face. Therefore the employee is placed at a very great disadvantage. I therefore beg to submit that permanent disfigurement should also be calculated as depreciating the earning capacity of the workman by ten per cent I therefore move the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I oppose the amendment. We are now legislating for workmen, and are now at fixing the compensation due to workmen.

PRESIDENT: Supposing permanent disfigurement lessens the chances of obtaining employment, does it not come within the provisions of the Bill?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir. It comes within the definition of the expression in 2 (g). As I said, we are now legislating only for workmen. If the disfigurement of the workman in any way tends to his capacity being diminished, it is a disablement which is contemplated in the definition contained in clause 2 (g) which we have already adopted. Partial disablement includes disablement which is of a temporary nature and is such as reduces the earning capacity of a workman in any employment.

PRESIDENT: I take it that the honourable member is making a distinction between the ability to take up employment and the ability to get employment. If you are ugly, you may not get the job.

MR. PUTHUPALLI S. KRISHNA PILLAI: In some cases it is true. That must be in the case of a workman and the disfigurement should be such as lessens his chances of getting employment. If that is so, it comes within the definition in clause 2 (g). There have been decided cases of the House of Lords where that question has been considered. I shall only refer to one decision on the matter.

> "There is incapacity for work when a man has a physical defect which makes his labour unsaleable in any market reasonably accessible to him, and there is partial incapacity for work when such a defect makes his labour saleable for less than it would otherwise fetch."
>
> No definite rule can be laid down as to what conditions constitute partial incapacity in cases not covered by Schedule I since facts will differ in practically every case. It may be said, however, generally that incapacity or disability cannot be found to be total, where it appears that the claimant's earning power is not wholly destroyed, and that he is still capable of performing some remunerative employment. In such a case, it stands to reason that he is under the obligation of making active efforts to procure such work as he can still perform."

Then again obvious disfigurement is not necessary, and true proof of lessening capacity to obtain work is sufficient.

PRESIDENT: What is the reference to that case?

MR. PUTHUPALLI S. KRISHNA PILLAI: 5 B. W. C. C. 459. There are also the following cases:—Ball *v.* Hunt (1912) A. C. 496, Martin *v.* Barnet (1910), 3 B. W. C. C. 146) Bywater *v.* Stehert (1932) 25 B.W. C. C. (422)

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[Mr. Puthupally S. Krishna Pillai.]

The first case is one in which a blind eye had to be removed as a consequence of some injury. He had to go about thereafter without an eye-ball in his eye. That lessened his chances of getting employment in the kind of work in which he was engaged at that time. It was said that it was sufficient disfigurement as would disable him from getting a job similar to the one that he was having at the time he sustained the injury and the court awarded him compensation. So that, it is a matter which, strictly speaking, comes within the definition. It must be a disfigurement which will affect the capacity of a person for work or to obtain work. To argue that, if a workman while carrying on work sustains some injury as a result of which the beauty of his complexion is marred, he must be given something by way of compensation can not be accepted. The test is whether an injury has affected his capacity to earn, and not whether the beauty of his complexion has been destroyed or lessened. As we are legislating only for workmen and not for anyone's beauty, the test for compensation depends on whether his capacity for work has been diminished. If so it comes within the definition of disablement. Therefore I think there is no meaning in adding to the schedule the expressions indicated in the amendment.

MR. E. SUBRAMONIA AIYAR: Sir, it is not my contention that a disfigurement may not reduce a workman's capacity. I grant that it will do so. The Bill as it stands does not include disfigurement. The Bill provides for two cases *viz.*, partial disablement and total disablement; and in a case of disfigurement the question will always be whether in an individual case, the alleged disfigurement will amount to disablement, partial or total. In the definition "partial disablement" means;

> "Where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement."

In Schedule I, of course, there is a list of injuries that is deemed to result in permanent partial disablement. When the injury complained of is one specifically mentioned in Schedule I, no further proof is required of the fact whether it would amount to a disablement entitling the workman to compensation. If you add permanent disfigurement to the list of injuries mentioned in Schedule I, the usefulness of the Schedule will be affected. Permanent disfigurement will never amount to total disablement. Again, the question will arise whether a disfigurement in a case under consideration is a permanent one or not. That will be greatly a matter of expert opinion. The certainty aimed at by Schedule I will disappear.

Again, a temporary disfigurement may also reduce the capacity of a labourer to earn work. I doubt whether it is competent to treat it as a matter fit for awarding compensation. The Bill does not exclude

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disfigurement as an injury which will reduce the earning capacity of a workman. Disfigurement may also amount to total disablement. When a person comes forward and says that by reason of disfigurement, his earning capacity was reduced, the court will have to determine the question as a fact. In other cases mentioned in Schedule I, there is no burden of proof on the worker. The question really for consideration is whether we should introduce disfigurement in Schedule I. The Bill has not excluded disfigurement from the category of circumstances which will enable a disabled worker to earn. If we introduce it in Schedule I, a permanent disfigurement will bring a partial disablement; but cases may occur where such a disfigurement may amount to total disablement. Cases may also occur when the disfigurement may be so trivial that it may not amount to disablement at all. That is my view of the matter.

SRIMATI C. O. PONNAMMA: I beg to withdraw the amendment.

The amendment was, by leave of the House, withdrawn.

The question that Schedule I form part of the bill was then put to vote and carried.

Schedule I was added to the bill.

SCHEDULE II.

The question that Schedule II do form part of the bill was then put to vote and carried.

Schedule II was added to the Bill.

SCHEDULE III.

The question that Schedule III do form part of the bill was next put to vote and carried.

The Schedule III was added to the bill.

SCHEDULE IV.

The question that Schedule IV do form part of the bill was put to vote and carried.

Schenule IV was added to the bill.

PREAMBLE.

The question that the Preamble do form part of the Bill was then put to vote and carried.

The Preamble was added to the Bill.

TITLE.

The question that the Title do form part of the Bill was then put to vote and carried,

The Title was added to the bill.

MR. PUTHUPALLY S. KRISHNA PILLAI: No amendment has been made in the bill as revised by the Select Committee. I beg to move that the bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it

The motion was put to vote and carried

The bill was passed.

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